

## REMARKS

### **Status of the Claims**

Claims 1-7 and 9-13 are presently pending in this application.

### **Claim rejections under 35 U.S.C. § 103**

The Office Action rejects claims 1, 2, 4, 7, 9, and 10 as being unpatentable over Leung (U.S. Patent Publication No. 2003/0052115) in view of Nakagawa et. al. (U.S. Patent Publication 2002/0189128).

In response to Applicants' prior remarks, the Final Office Action states that "Leung discloses in paragraph 25 that the barrel portions houses a heater." This statement, however, does not address Applicants argument that, "the Leung reference also lacks a 'heater contained in the barrel for heating the barrel during use.'" Applicants respectfully maintain that this feature of the rejected claims is still not supplied by the Leung reference.

Additionally, the Final Office Action states that "Leung discloses in paragraph 15 'a barrel or barrel portion having a cavity and having a heatable surface.'" Applicants respectfully note that the entire phrase in paragraph 15 of Leung reads "a barrel or barrel portion having a cavity and having a heatable surface with one or more vents to release heat from the barrel." In light of the full quote, Applicants submit that this confirms the Leung reference's purpose, which is to transmit heat from within the barrel to the exterior of the barrel via forced air flow. Even if this passing mention in the Lueng reference means that the interior surface of the barrel is heated, the interior surface is not the one that contacts a user's hair. With respect to Claims 1, 2 and 4, Leung simply does not "heat[] the hair of a user by conduction of heat from a heated surface to the hair of a user" as required by those claims. Regarding claims 7, 9, and 10, they are

presently amended to clarify that it is the exterior surface of the barrel that is heated by those claims.

The Leung reference describes a device based on completely different principal than the one disclosed in the present invention. Leung is not a modified curling iron as in the present invention, but is rather a completely different type of curling iron, namely a “hot air curling iron.” This change is significant as it shows the different principle of operation between the two devices. The Leung reference operates by blowing hot air over the hair so that it may eventually be curled.

Applicants respectfully maintain that the limitations not supplied by the Leung reference are not supplied by the Nakagawa reference. Therefore, the combination of the Nakagawa reference and the Leung reference does not result in the present invention. At least the above reasons, Applicants respectfully request that the Examiner withdraw the § 103 rejection based on Leung in light of Nakagawa with respect to Claims 1, 2, 4, 7, 9 and 10 because the combination of references lacks at least one claimed feature.

The Office Action rejects claims 1, 3-6, and 11-13 as being unpatentable over Cha (United States Patent Publication No. 2005/0056631) in view of Nakagawa et al. (United States Patent Publication No. 2002/0189128).

A rejection under 35 U.S.C. § 103(a) can be overcome by antedating either reference as available prior art under 35 U.S.C. § 102. MPEP 2141.01. Cha was published after the filing date of this application, therefore it is not part of the prior art under 35 U.S.C. § 102(a) or (b). A prior art rejection based on 35 U.S.C. § 102(e) can be overcome by submitting an affidavit or declaration under 37 CFR 1.131. MPEP 2136.05. Applicants submit the attached declaration signed by all inventors of the present application establishing invention of the subject matter of

the rejected claims in the United States prior to the filing date of the Cha reference. Therefore, the Cha reference cannot form the basis of a rejection under 35 U.S.C. § 103(a). MPEP 2141.01.

Based on the submission of the attached declaration, the Applicants respectfully request that the rejection of the claims under 35 U.S.C. § 103(a) with respect to Cha be withdrawn.

#### SUMMARY OF RESPONSE

It is believed that in light of the attached declaration, amendments and remarks above, the application is in condition for allowance. Accordingly, reconsideration and favorable action in this case are respectfully requested. If the Examiner believes that a telephone conference would expedite the prosecution of the case, the Examiner is invited to call the undersigned at the number below.

Respectfully submitted,

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